

200804025



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT 30 2007

U.I.L. 408.03-00

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
Taxpayer B = XXXXXXXXXXXXXXXXXXXX
Amount C = XXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXX
Amount E = XXXXXXXXXXXXXXXXXXXX
Amount F = XXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Account T = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Bank S = XXXXXXXXXXXXXXXXXXXX
Bank R = XXXXXXXXXXXXXXXXXXXX
Individual N = XXXXXXXXXXXXXXXXXXXX

Dear

This is in response to a request dated January 10, 2007, submitted on your behalf by your authorized representative for a letter ruling to waive the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"). Correspondence dated October 18, 2007, supplemented the request.

The following facts and representation have been submitted under penalties of perjury in support of the ruling requested.

XXXXXXXXXXXXXXXXXXXX

Page 2

Taxpayer A states that he maintained a Simplified Employee Pension Plan (SEP)-Individual Retirement Arrangement, IRA X, with Bank S. Taxpayer A states that he became unhappy with the return on his investments with Bank S and thought that he could better manage the funds himself. Taxpayer A further states that he instructed Bank S to directly transfer Amount C from IRA X to an account at Bank R.

Documentation submitted by Taxpayer A shows that on March 17, 2006, Amount C was transferred from IRA X to Bank R, which was deposited into Account T. Account T is described as a joint savings account Taxpayer A and his spouse, Taxpayer B, already maintained with Bank R. Documentation submitted by Taxpayer A also shows that on March 20, 2006, Amount D was transferred from Account T to Individual N. Taxpayer A states that he invested Amount D with Individual N and that Individual N pays a return on such investment which is always deposited into Account T. Further, Taxpayer A states that on December 14, 2006, he purchased a certificate of deposit with Bank S in the amount of Amount F. Amount F consists of Amount E, the balance of the IRA X funds transferred from Bank S and Taxpayer A and Taxpayer B's personal funds.

Taxpayer A states that in a meeting with his accountant in late 2006, he learned that a qualified retirement account may not have been set up at Bank S even though Taxpayer A has not submitted any documentation or evidence that shows that he instructed Bank S to set up an IRA and Bank S failed to do so, or, that he completed an application form to establish an IRA with Bank S and Bank S failed to establish such an account.

Taxpayer A states that he refers to Account T as a retirement account, that the funds transferred from IRA X have been invested in allowable IRA investments and that such funds have never been used for any other purposes. Taxpayer A states that he did not realize that Account T, which is described as a joint savings account per account statements submitted with this request, was not an eligible retirement account.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount C from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

XXXXXXXXXXXXXXXXXXXX

Page 3

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA, which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted in this case shows that Amount C was transferred from IRA X and deposited into Account T on March 17, 2006. The facts indicate that the ability to timely complete a rollover of Amount C was

200804025

XXXXXXXXXXXXXXXXXXXX

Page 4

at all times within Taxpayer A's control as he has not submitted any documentation or other evidence to the Service that shows how any of the factors outlined in Revenue Ruling 2003-16 affected his ability to timely roll over Amount C to another IRA within the applicable 60-day time period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount C from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

If you have any questions please contact

Sincerely yours,

(signed) **JOYCE E. FLOYD**

Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose, Notice 437